

§ 76.5

28 CFR Ch. I (7–1–08 Edition)

must be made within thirty (30) days from the date the notice is served;

(6) That a respondent may waive an adjudicatory proceeding at any time and agree to pay a penalty in an amount to be determined by the Attorney General; and

(7) That in determining the amount of the penalty the respondent's income and net assets must be considered.

(c) *Answer to notice.* To timely request an adjudicatory proceeding in response to a Notice, a respondent must serve upon the United States Attorney designated in the Notice a written answer responding to each allegation listed in the Notice and request a hearing, in accordance with 28 CFR 76.4(b), within thirty (30) days from the date the Notice was served upon the respondent. If the respondent does not serve an answer within thirty (30) days, the Attorney General or his designee may enter a final order, from which there is no appeal, ordering a payment of a civil penalty.

§ 76.5 Complaint.

(a) If the respondent requests an adjudicatory proceeding, the United States Attorney, within fifteen (15) days after receipt of the request, shall file a complaint against the respondent with a Judge who has been assigned to hear and decide the case and shall serve a copy of the complaint on the respondent as provided in 28 CFR 76.6(b).

(b) The complaint shall contain a concise statement of factual allegations informing the respondent of the act or conduct alleged to be in violation of law, the approximate date, place and location of the alleged violation including the federal district, the statutory provisions alleged to have been violated, the amount of penalty for which the respondent could be held liable, and the amount of the proposed penalty. It shall also indicate the date upon which the Notice of Intent to Assess Civil Penalty was served and shall be accompanied by a copy of that notice.

§ 76.6 Service and filing of documents.

(a) *Generally.* Unless ordered otherwise, an original and one copy of the complaint and all other pleadings shall

be filed with the Judge who has been assigned to the case. Each party shall deliver or mail, in accordance with paragraph (b) of this section, a copy of all pleadings, including any attachments to the other party. Each pleading filed shall be clear and legible.

(b) *By and on parties.* The Notice of Intent to Assess Civil Penalty and the Complaint shall be served by personal delivery or by certified or registered mail, return receipt requested, to the respondent. When it is known that a party is represented by an attorney, service of any other pleading, paper or document subsequent to the Notice and Complaint shall be made upon the party's attorney. Service of such other pleadings, papers, or documents may be made by personal delivery or by mailing, by first class mail, a copy to the party or attorney at the party's or attorney's last known address. The party serving the document shall certify the manner and date of service.

(c) *By the judge.* Except as provided in paragraph (d) of this section, service of Notices, Orders and Decisions shall be made by first class mail to the last known address of a party or, if the party is known to be represented by an attorney, to the attorney.

(d) *Service of notice of hearing.* Service of Notice of the Date Set for Hearing shall be made by the Judge with whom the complaint has been filed either by delivering a copy to the individual party or, if known, to the attorney of record of a party; or by mailing, by certified or registered mail, return receipt requested, a copy to the last known address of a party or a party's attorney.

(e) Service is complete upon delivery to the addressee or, in the case of service by mail, upon mailing.

(f) Filing of pleadings, papers or other documents shall be deemed completed upon delivery to the Judge assigned to the case or the Judge's designee.

§ 76.7 Content of pleadings.

(a) Every pleading shall contain a caption setting forth the statutory provision under which the proceeding is instituted, the title of the proceeding, the docket number assigned by the Judge, the names of all parties, and a designation of the type of pleading or

Department of Justice

§ 76.9

paper (e.g., complaint, motion to dismiss). The pleading shall be signed and shall contain the address and telephone number of the party or person representing the party. The pleadings should be typewritten when possible on standard-size (8½×11) paper. Legal size (8½×14) paper will not be accepted, except upon approval by the Judge.

(b) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process, provided all copies are clear and legible.

(c) All documents presented by a party in a proceeding must be in English or, if in a foreign language, accompanied by a certified translation.

§ 76.8 Time computations.

(a) *Generally.* In computing any period of time under this part or in an order issued hereunder, the time begins with the day following the act, event, or default requiring service, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday observed by the federal government, in which case the time period includes the next business day. When the period of time prescribed is eleven (11) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

(b) *Date of entry of orders.* In computing any period of time involving the date of the entry of an order, the date of entry shall be the date the order is signed by the Judge.

(c) *Computation of time for service by mail.* Whenever a party has a right or is required to do some act or take some action within a prescribed period after service of a pleading, paper, or notice and the pleading, paper, or notice is served upon the party by mail, three (3) days shall be added to the prescribed period.

§ 76.9 Responsive pleading—answer.

(a) *Time for answer.* A respondent shall file and serve on the United States Attorney having jurisdiction over the matter an answer within thirty (30) days after the service of a complaint.

(b) *Default.* Failure of the respondent to file and serve an answer within the

time provided shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint. In such cases, the Judge may enter a judgment by default.

(c) *Answer.* Any respondent contesting any material fact alleged in a complaint, or contending that he or she is entitled to judgment as a matter of law, shall file an answer in writing.

(1) The answer shall include a statement of the facts supporting each affirmative defense.

(2) The answer shall include a statement that the respondent admits, denies, does not have and is unable to obtain sufficient information to admit or deny each allegation, or that an answer to the allegation is protected by a privilege, including the privilege against self-incrimination.

(3) A statement of lack of information or a statement that the answer to the allegation is privileged shall have the effect of a denial.

(4) Any allegation not denied shall be deemed to be admitted.

(d) *Reply.* A complainant may file a reply responding to each affirmative defense arrested if the Judge, pursuant to 28 CFR 76.10, so provides.

(e) *Amendments and supplemental pleadings.* If it will facilitate resolution of the controversy, the Judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to complaints and other pleadings at any time prior to the issuance of the Judge's order based on the complaint. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make the pleadings conform to the evidence. The Judge may, upon reasonable notice and such terms as are just, permit supplemental pleadings setting forth transactions, occurrences, or events which have happened or new law promulgated since the date of the pleadings and which are relevant to any of the issues involved.